

Remarks

Reconsideration of this Application is respectfully requested in view of the following remarks and the re-filed RCE filed and Submission.

Claims 1-47 are pending in the application, with claims 1, 39, 43 and 45 being independent claims. Based on the following remarks Applicant respectfully requests that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

The Examiner has finally rejected claims 1-47 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-67 of co-pending Application No. 09/237384 (hereinafter, '384) and claims 1-60 of co-pending Application No. 09/237,406 (hereinafter, '406). This is a provisional rejection because the claims of the co-pending applications have not in fact been patented. The Examiner has also provisionally rejected claims 1-47 under obviousness under 35 USC §§ 103, and 102(f).

Applicants respectfully traverse each of these rejections in view of the recent amendment to 35 USC § 103, which created subsection (c), and reads as follows:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f) and (g) of section 102 of this title, **shall not be precluded patentability** under this section **where the subject matter and the claimed invention were at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.**

(Emphasis added, see M.P.E.P. 706.02(1)(1).) The subject matter of co-pending applications '384, '406 and the claimed invention of the present application (*i.e.*, '947), **was at the time the invention was made, owned by the same person.** This newly added subsection of section 103 applies to all continuing applications filed after November 29, 1999, which include the RCE filed on March 6, 2001.

Therefore in view of this amendment to section 103, the enclosed RCE and Submission, Applicant respectfully submits that neither of co-pending applications '384 or '406 qualify as prior art against the instant application '947, and that all pending claims are now in condition for allowance.

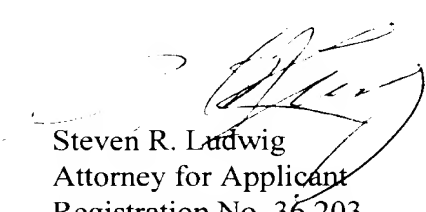
Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of the enclosed RCE under 37 CFR § 1.114
and Submission under 37 CFR § 1.114(b) are respectfully requested.

Respectfully submitted,

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